

REMARKS

Claims 1-9 are pending in the application. In the Office Action of November 18, 2005, the Examiner made the following disposition:

- A.) Rejected claims 1, 3-5, and 7-9 under 35 U.S.C. 102(b) as being anticipated by *Thackeray, et al.*
- B.) Rejected claims 1, 5, and 9 under 35 U.S.C. 102(e) as being anticipated by *Mizutani, et al.*
- C.) Rejected claims 2 and 6 under 35 U.S.C. 102(b) as anticipated by or in the alternative under 35 U.S.C. 103(a) as unpatentable over *Thackeray, et al.*
- D.) Provisionally rejected claims 1 and 5 under the judicially created doctrine of double patenting in view of claims 1-2 of Application No. 10/439,807.

Applicants respectfully traverse the rejections and address the Examiner's disposition below.

Claims 10-18 are newly added.

- A.) Rejection of claims 1, 3-5, and 7-9 under 35 U.S.C. 102(b) as being anticipated by *Thackeray, et al.*:

Applicants respectfully disagree with the rejection.

Independent claims 1 and 5, each as amended, each claim an anode material comprising a tin-containing material including metallic tin and Cu₃Sn in the same particle.

This is clearly unlike *Thackeray*, which fails to disclose or suggest an anode material comprising a tin-containing material including metallic tin and Cu₆Sn₅ in the same particle. Nowhere does *Thackeray* disclose or suggest an anode material that comprises Cu₃Sn. Therefore, *Thackeray* fails to disclose or suggest claims 1 and 5.

Claims 3, 4, and 7-9 depend directly or indirectly from claim 1 or 5 and are therefore allowable for at least the same reasons that claims 1 and 5 are allowable.

Applicants respectfully submit the rejection has been overcome and request that it be withdrawn.

- B.) Rejection of claims 1, 5, and 9 under 35 U.S.C. 102(e) as being anticipated by *Mizutani, et al.*:

Applicants respectfully disagree with the rejection.

Independent claims 1 and 5, each as amended, each claim an anode material comprising a tin-containing material including metallic tin and Cu₃Sn in the same particle.

This is clearly unlike *Mizutani*, which fails to disclose or suggest an anode material comprising a tin-containing material including metallic tin and Cu₆Sn₅ in the same particle. Nowhere does *Mizutani* disclose or suggest an anode material that comprises Cu₃Sn. Therefore, *Mizutani* fails to disclose or suggest claims 1 and 5.

Claim 9 depends directly or indirectly from claim 5 and is therefore allowable for at least the same reasons that claim 5 is allowable.

Applicants respectfully submit the rejection has been overcome and request that it be withdrawn.

C.) Rejection of claims 2 and 6 under 35 U.S.C. 102(b) as anticipated by or in the alternative under 35 U.S.C. 103(a) as unpatentable over *Thackeray, et al.*:

Applicants respectfully disagree with the rejection.

Independent claims 1 and 5 are allowable over *Thackeray* as discussed above.

Claims 2 and 6 depend directly or indirectly from claim 1 or 5 and are therefore allowable for at least the same reasons that claims 1 and 5 are allowable.

Applicants respectfully submit the rejection has been overcome and request that it be withdrawn.

D.) Provisional rejection of claims 1 and 5 under the judicially created doctrine of double patenting in view of claims 1-2 of Application No. 10/439,807:

Applicants respectfully disagree with the provisional rejection. Further, since the respective applications are currently pending, Applicants believe that it is premature to file a terminal disclaimer at this time.

CONCLUSION

In view of the foregoing, it is submitted that claims 1-9 are patentable. It is therefore submitted that the application is in condition for allowance. Notice to that effect is respectfully requested.

Respectfully submitted,

 (Reg. No. 45,034)
Christopher P. Rauch
SONNENSCHEIN, NATH & ROSENTHAL LLP
P.O. Box #061080
Wacker Drive Station - Sears Tower
Chicago, IL 60606-1080
Telephone 312/876-2606
Customer #26263
Attorneys for Applicant(s)